

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COMMANDER EMILY SHILLING; *et al.*,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; *et al.*,

*Defendants.*

No. 2:25-cv-00241 BHS

**SUPPLEMENTAL DECLARATION  
OF ALEX WAGNER IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

I, Alex Wagner, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and in all respects competent to testify.

2. I have actual knowledge of the matters stated herein. If called to testify in this matter, I would testify truthfully and competently as to the matters stated herein.

**Accession and Retention Standards**

3. The military maintains different medical standards for accession (entry into service) versus retention (continued service). For accessions, the standards are deliberately and appropriately stringent because the military makes a substantial long-term commitment to each service member it accepts, including comprehensive medical care that may extend throughout their lifetime.

4. The military must ensure that newly accessed service members can fulfill their initial contract term and potentially serve for many years beyond. Given the significant financial

1 and resource investment the military makes in training and developing each recruit, it can only  
 2 accept individuals whose potential service value will equal or exceed the resources invested in  
 3 them. This creates a necessarily high bar for medical qualification at accession.

4 5. The 18-month stability requirement for transgender individuals seeking to enter  
 5 military service, as set forth in Volume 1 of DOD Instruction 6130.03, *Medical Standards for*  
 6 *Military Service: Appointment, Enlistment, or Induction* (May 28, 2024) (“DoDI 6130.03 Vol. 1”)  
 7 (a copy of which is filed as ECF No. 31-12), is based on the same considerations applied to other  
 8 treatable medical conditions at accession, reflecting standard military medical policy rather than  
 9 any unique restriction on transgender service.

10 6. In contrast, retention medical standards, as set forth in Volume 2 of DOD  
 11 Instruction 6130.03, *Medical Standards for Military Service: Retention* (Jun. 6, 2022) (“DoDI  
 12 6130.03 Vol. 2”) (a copy of which is filed as ECF No. 73-5), focus on a service member’s ability  
 13 to perform their duties, deploy when required, and contribute effectively to the military mission.  
 14 (*See* DoDI 6130.03 Vol. 2 at 1.2.) The military recognizes that there are numerous roles and  
 15 positions within its ranks, and importantly, it has made a commitment to those who have already  
 16 chosen to serve.

17 7. This is why DoDI 6130.03 Vol. 2 explicitly requires that every medical condition  
 18 be evaluated on a case-by-case basis to determine if continued service is appropriate. (*See* DoDI  
 19 6130.03 Vol. 2 at 1.2.b(1), 3.2, 3.3.a(1).) The instruction specifically mandates consideration of  
 20 each service member’s ability to safely complete common military tasks at their grade level, their  
 21 specific duty requirements, and whether they can serve in deployed or garrison conditions. (*See*  
 22 DoDI 6130.03 Vol. 2 at 3.2.a.)

23 8. I can’t think of any medical condition that bars continued service—rather, the  
 24 impact of the condition on the individual service member’s ability to perform their duties must be  
 25 evaluated. In my experience, it would be highly unusual, and I cannot think of another example,  
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1 where a medical condition would result in a categorical bar to retention without such  
2 individualized assessment.

3 9. For transgender service members, service in the military means serving in a sex  
4 different from their sex assigned at birth. The process for gender transition is detailed in DOD  
5 Instruction 1300.28, *In-Service Transition for Transgender Service Members* (Dec. 20, 2022)  
6 (“DoDI 1300.28”) (Exhibit D to my initial declaration, filed as ECF No. 33-4), which establishes  
7 a protocol for transgender service members. This includes notifying their command, obtaining a  
8 medical diagnosis from a military medical provider, developing and completing an approved  
9 medical treatment plan for gender transition, and changing their sex designation in the Defense  
10 Enrollment Eligibility Reporting System (DEERS). (*See* DoDI 1300.28 at 3.3.)

11 10. Once a transgender service member has changed their sex marker in DEERS, they  
12 live and serve fully in the sex designated on the DEERS marker. This means they are referred to  
13 by the pronouns associated with their DEERS marker, use facilities consistent with their DEERS  
14 marker, are assigned berthing consistent with their DEERS marker, and have to meet all of the  
15 military standards consistent with their DEERS marker.

16 11. If a transgender service member were prevented from serving in accordance with  
17 their DEERS marker, that individual could not serve in the military as a transgender person.

18 12. Based on my knowledge, many of the medications that transgender service  
19 members may take as part of their medical care are also prescribed to numerous non-transgender  
20 service members for various medical conditions, demonstrating that these medications are  
21 compatible with military service.

22 13. As is generally true, there are different criteria for accessions than for retention for  
23 transgender service members. For accession into the military, a transgender person must be stable  
24 for 18 months following completion of gender transition before they can enter service. (*See* DoDI  
25 6130.03 Vol. 1 at 6.13.g(1), 6.14.b, 6.14.n(1), 6.28.t(1).)  
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1           14.     However, for retention of currently serving transgender service members, there is  
 2 no set time period during which a person must be stable following gender transition. Instead,  
 3 consistent with the case-by-case assessment required by DoDI 6130.03 Vol. 2, the determination  
 4 of stability and readiness for duty is individualized and based on each service member's specific  
 5 medical circumstances and needs.

6           15.     In fact, for most transgender service members, there is often no period of non-  
 7 deployability associated with their gender transition. This reflects the military's recognition that  
 8 medical needs vary among individuals and that blanket time requirements are neither necessary  
 9 nor appropriate for retention determinations.

#### 10                                   **The February 26, 2025 Memorandum**

11           16.     According to the February 26, 2025, policy providing additional guidance on  
 12 implementing the transgender military ban announced by President Trump, transgender service  
 13 members will face dismissal through administrative separation.

14           17.     Consistent with the purpose and policy of the Order, which is to bar transgender  
 15 people from military service, the "waiver" in Section 4.3(c) of the Implementing Guidance creates  
 16 barriers that make it impossible for a transgender person to qualify by excluding anyone who has  
 17 transitioned or who cannot demonstrate three years of serving in their birth sex without clinically  
 18 significant distress.

19           18.     The "waiver" for accession in 4.1(c) also fails to provide transgender applicants  
 20 with any avenue for service because it similarly requires that an individual must serve in their birth  
 21 sex—i.e., must suppress or deny their transgender identity.

22           19.     In my experience, dismissal through administrative separation is typically used for  
 23 misconduct or failing to meet standards, not for treatable medical conditions where the service  
 24 member meets the requirements for service, including both job performance and fitness standards.

25           20.     I am not aware of administrative separation ever being used to separate service  
 26 members with a medical condition which can be successfully managed via treatment, and

1 moreover where, when treated, the medical condition does not interfere with a member's ability  
2 to deploy and meet standards.

3 21. Normally, when a service member has a medical condition that would limit their  
4 ability to serve or deploy, they go through a medical review, not administrative separation.

5 22. My understanding is that administrative separation is most often used as  
6 disciplinary procedure to effect eventual military discharge. The ordinary path for evaluating  
7 impacts from medical conditions is the Disability Evaluation Service (DES) with administrative  
8 separation largely reserved for misconduct (including drug abuse) or repeated failure to meet  
9 standards, given the significant financial investment the military has already made in the member.

10 23. In addition, based on my experience, individual or aggregated costs associated with  
11 medication or medical procedures is not a justification for administrative separation. Transgender  
12 service members constitute a small fraction of military personnel, and their health care costs  
13 represent a de minimis amount of overall health care spending. In fact, non-transgender service  
14 members may be prescribed the same medications transgender service members need for gender  
15 transition. There is no reason for this group to bear the burden of cost cutting measures when other  
16 service members have similar medical needs.

17 24. I am aware of congressional testimony that coverage for Viagra for service  
18 members in 2023 accounted for \$41M of the Department of Defense's budget. These expenditures  
19 are important investments and just one of many examples of the full spectrum health care that  
20 represents a benefit of service necessary to maintaining an all-volunteer force. I raise this only to  
21 note that the relative costs associated with providing essential health care for transgender troops  
22 represents a miniscule part of the defense budget for the years they have been permitted to serve.

23 25. The rushed and haphazard manner in which this policy has been issued and  
24 implemented is highly unusual. Ordinarily, the reversal of an existing policy—especially one  
25 adopted after careful study and review—would take place only in response to significant,  
26 documented problems with existing policy, after careful consideration and review including an

1 explanation of what led to the problematic outcomes, and would be rolled out in a careful, orderly  
2 fashion that provided commanders and members clear guidance.

3         26. The process leading to the Order and Implementing Guidance has taken a very  
4 different and, in my experience, highly unusual course. The decision to target and purge  
5 transgender troops was not based on any documented problem. It was not based on a careful study  
6 and review. It has been rolled out on an extremely expedited timeline that puts the affected service  
7 members under enormous pressure to make life-altering decisions without adequate time to seek  
8 counsel or reflect. It comes with no guidance on how units should adapt, reconfigure, or adjust to  
9 the loss of a teammate performing an important role.

10         27. The issuance of a series of vague and in some cases conflicting directives  
11 undermines confidence in civilian leadership.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Dated: March \_18\_, 2025.

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Alex Wagner